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VIRGINIA LAW REGISTER.

W. M. LILE, ... EDITOR.

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MISCELLANEOUS NOTES.

WE surrender much of our space in this number to the proceedings of the State Bar Association recently held at the Hot Springs. We do this not solely out of compliment to the Association, but for the intrinsic merit of the papers read, and for the value which it is believed they will possess for our readers—even such as have heard them already. It is true that these papers will be published in the annual report to be issued later, but we believe they will be read with much more interest now, while the meeting is fresh in the minds of the profession. The publication of the annual volume, containing a report of the proceedings, is usually deferred for some months, when the lawyers have returned to their desks, and when, as the result of business or of indifference, the volume remains unread.

THE Law Library of the University of Virginia will be glad to receive copies of briefs and of printed records of cases in the appellate courts. These are desired for the use of the students in familiarizing them with the methods of procedure in appellate courts, and with the style of legal arguments, and for use in the preparation of their Moot Court arguments. All such pamphlets received will be acknowledged, and carefully filed and preserved. Counsel who are kind enough to send their briefs will confer an added favor by endorsing thereon a succinct statement of the points discussed. Such matter should be addressed to *Law Librarian, University Station, Charlottesville, Va.*

WEST VIRGINIA BAR EXAMINATION.—We are in receipt of a copy of the questions submitted to candidates for admission to the bar in West Virginia, on the examination held at Morgantown, August 4, 5 and 6, 1897. The questions number seventy-one, but many contain sub-divisions, so that if enumerated separately the total would be more than three times that number. The examination is scarcely subject to the criticism applied to our own recent bar examination—"too easy." Three days were required to complete it, and the character of the questions was such—most of them being intensely practical—that the crammer and the quiz-book candidate were shown little mercy. If the standard adopted by the examiners is high, those candidates who passed deserve to be heartily congratulated. Certainly the profession in West Virginia is to be congratulated upon the excellent beginning made under the new law.

SUPPLY LIENS—VIRGINIA CODE, SEC. 2485.—In *Fidelity etc. Co. v. Roanoke Iron Co.*, 81 Fed. Rep. 440, the Circuit Court of the United States for the Western District of Virginia was called upon to construe sec. 2485 of the Virginia Code (as amended by Acts 1891-2, p. 362), on a question of priority between a pledgee of the product of a manufacturing company and subsequent supply-lien creditors. In an opinion by Simonton, Circuit Judge, it is held that the supply-lien creditors are entitled to priority. This conclusion seems irresistible, in view of the language of the Act, that "All persons furnishing supplies to a mining or manufacturing company, necessary to the operation of the same, shall have a prior lien upon the personal property of such company other than that forming a part of its plant, to the extent of the money due them for such supplies, and also a lien upon all the estate, real and personal, of such company, which last lien, however, upon all such real and personal estate, shall be subject and inferior to any lien duly admitted to record prior to the date at which said supplies are furnished." The court justly criticises the language of the Act as obscure, but, when read in the light of its previous history, and in connection with the provisions preceding that portion quoted, the intention to place the supply liens ahead of all other liens on the product of the company seems clear enough. In the same case it was held that a carrier's charges for freight on supplies furnished the company were not proper subjects of the lien provided by sec. 2485, nor were claims for goods supplied for a commissary store conducted by the company. The salaries of the manager, secretary and treasurer were likewise held to be excluded, as not embraced in the terms of the Act.

DEATH OF JUDGE WALLER R. STAPLES.—Death has again invaded the ranks of the profession and claimed another distinguished Virginia lawyer, in the person of the Hon. Waller R. Staples, late a member of the Supreme Court of Appeals and one of the revisors of the Code of 1887. He and the late Judge Burks served together on the supreme bench, and again together in the revisal of the Code, and we may now almost say that together they set out on their last journey to the land of shadows.

Judge Staples had long been a prominent figure at the Virginia bar, and occupied the highest rank, both as an advocate and a judge. Save Judge Joseph Christian, he was the last survivor of the members of Supreme Court of Appeals who went upon the bench after reconstruction days in 1870. For the force, clearness and accuracy of his opinions while on the bench, he was probably not surpassed by any of his associates.

We extract the following brief sketch of his life from the *Richmond Dispatch*:

"Hon. Waller Reed Staples was a native of Virginia, and had lived within her borders all his life. He was identified with all that meant the upbuilding and advancement of Virginia, and had been a prominent figure in her political and official history for nearly half a century. Judge Staples was in the seventy-second year of his age when he died, having been born in Patrick county, February 24, 1826. He was a son of Col. Abram Staples, a distinguished Virginian of his time. After having made considerable advancement in the schools of his native town, his parents, who were ambitious for him, sent him to the University of North Carolina. At this seat of learning, the young Virginian took a high stand, and after remaining there two years, he attended William and Mary College, from

which institution he graduated with high honors in 1846. Having equipped himself for the practice of the law, he embarked in this profession in Montgomery county, in 1848, going into the office of Hon. William Ballard Preston, Secretary of the Navy, under President Taylor. He was elected to the legislature for the sessions of 1853 and 1854, and served in the lower house with distinction. In those days he was a Whig in politics, and was an elector on the presidential tickets in 1856 and 1860.

"When the State of Virginia adopted the ordinance of secession in April, 1861, the convention appointed four commissioners, or representatives, to represent the State in the provisional congress at Montgomery, Alabama—Hon. William C. Rives, R. M. T. Hunter, Judge Brockenbrough and the subject of this sketch. Judge Staples served in the provisional congress until the termination of its existence, February 22, 1862. On that day the new government went into effect, and Judge Staples having been elected by the people by a large majority, one of the members of its house of representatives, was triumphantly re-elected in 1863, and served in that body until the close of the war.

"He then resumed the practice of his profession in Montgomery county, and so continued until he was elected a judge of the Supreme Court of Appeals, in February, 1870, by the legislature of Virginia. He received the highest vote given in that body for any one of the candidates, except the Hon. R. C. L. Moncure. When, in 1882, the Readjuster party obtained control of the State, Judge Staples and his associates on the bench were not re-elected—that party having a large majority in the legislature.

"Judge Staples served on the bench with signal ability. With a mind well endowed by nature, he so mastered, digested and classified the law, that when a case was presented for his decision, he had, as it were, only to lift the flood-gates of his well-stored mind, and direct the flow of elementary principles and adjudged cases into their proper channels, and the solution of the question would result almost as easily as water finds its level. The number of decisions rendered by him attest his industry on the bench. Scrupulously honest and upright, he never legislated from the bench, but always construed the law as it is written. Couching able opinions and profound propositions of law in language clear and simple, laying aside rubbish and padding, but closely adhering to clear, clean-cut principles and rules of law, his decisions are models worthy of imitation, and are universally respected by the bench and bar of Virginia.

"Probably his most notable act during his long term on the supreme bench, was the rendering the opinion in the celebrated 'Coupon Cases' in 1878, which led to the formation of the Readjuster party in Virginia. The opinion was afterwards adopted by the courts of Virginia and of the United States."

THE VIRGINIA STATE BAR ASSOCIATION.—The recent meeting of this Association held at the Hot Springs, August 3, 4 and 5, was one of unusual interest. The Hot Springs is a most delightful place, and will doubtless hereafter share with the White Sulphur and Old Point the honor of entertaining the Association. One serious objection to be urged against it as a place of meeting is the lack of proper accommodations for so large an addition to its regular patronage. Late arrivals were obliged to occupy cramped and uninviting apartments. But aside from this, the place is an ideal one.

The address of the President, Hon. W. W. Henry, had for its subject the trial of Aaron Burr. It was of the scholarly character to be expected of him, and forms a valuable contribution to the history of that important crisis in the life of the nation. We hope to be able at an early day to give it a more extended notice. The reports of the Committee on Library and Legal Literature and on Legislation and Law Reform are published elsewhere in this issue. The former discusses "The Appellate Court Brief." It is especially commended to our younger brethren of the bar, and older lawyers will find it deserving of careful perusal. In the very excellent report of the Committee on Legal Education and Admission to the Bar, the startling assertion is made that during the year ending July 1, 1896, there were two hundred admissions to the bar in this State! Since that time the new law regulating admission has kept the number down to thirty-four.

The report of J. C. Parker, Esq., of the Special Committee on the Judiciary System of the State, called forth the most animated discussion of the session. The report was finally rejected, not because of inherent lack of merit, but as presently impracticable. It was urged that the hostility of those whom the reform would sweep out of office would be insurmountable. Criticism of our present judiciary system is common amongst members of the bar, but Mr. Parker alone has had the courage and the energy to suggest a remedy and to bring forward detailed working plans to give it effect. We wish him godspeed in his single-handed fight for reform along this line. We hope that he may continue the agitation until the army of cheap judges, supported at enormous expense, shall be supplanted by a select few, composed of the best legal talent the State can command. The judicial station should be the highest to which a lawyer can aspire, and an honor reserved only for those who have attained pre-eminence for learning, character and ability. But this out of view, Mr. Parker's comparative statement of the expense incident to the present and proposed systems seems to be an unanswerable argument, in the present cramped condition of State finances.

Nothing said in this connection is intended to reflect, in the remotest way, upon the judges of Virginia, from the lowest to the highest. Indeed, in character, we believe no purer body of men exists anywhere; and considering the meagre salaries paid, it is surprising that the judicial office should attract so many lawyers of real ability. What we do mean to say is, that under existing conditions the State cannot and does not command, and will never command, the best legal talent with which to fill its judicial stations. What ambitious young lawyer looks forward, with keen desire, to the time when the State shall call him to preside in one of its courts? What father spurs his son to greater diligence by holding out the alluring hope that some day he may become a judge of his county court? When judicial salaries are large enough to attract the best material, and to give our judges that independence, that dignity, that freedom from petty cares, which can never exist where debt oppresses or poverty pinches, we shall then have a judiciary second to none in the Union.

W. P. McCrae, Esq., of Petersburg, read before the Association a valuable paper on "Legislation Since the Code." Mr. McCrae has been for some years a member of the legislature, and, being an excellent lawyer, was well equipped for the task. His paper contains much matter of practical utility, and we hope to notice it more at length hereafter.

One entire evening of the session was devoted to the memory of two of the Association's most distinguished members, recently deceased—Judge E. C. Burks, late editor of this journal, and Hon. J. Randolph Tucker, of Washington and Lee University. The memorial of Judge Burks was prepared by Judge George L. Christian, of Richmond, and that of Professor Tucker by Alexander Hamilton, Esq., of Petersburg. Both papers were worthy tributes to these distinguished Virginia jurists. The memorial of Judge Burks is published in another part of this issue.

Probably the feature of most general interest was the masterly address of Prof. Woodrow Wilson, of Princeton University. Mr. Wilson, though still young, has long been known by reputation to the Virginia bar, but a closer contact and a more intimate acquaintance have gained for him an enduring place in their admiration and esteem. The theme of the address was "Leaderless Government." We deem it a happy incident that we are able, elsewhere in this number, to lay the address in full before our readers. We believe that even in cold type it will strongly appeal to those who were not fortunate enough to hear it delivered. For those who heard it as it fell from the speaker's lips, like new coin from the mint, its perusal will possess an added interest in recalling the attractive personality, the grace of delivery, the charm of voice and the exquisite diction of the speaker.

From the increasing interest in the Association, manifest on the part of the bar of the State, one may reasonably predict for it a long and useful career.

We make the following extracts from the Secretary's report:

"We had 439 active members upon our roll after our last annual meeting. Since that we have lost 6 by death, 11 by resignation, and 2 by removal from the State, making a total of 19; and we have gained one by reinstatement and one by admission. Our loss, therefore, has been 17, and we now have on our roll at the beginning of this our Ninth Annual Meeting 422 active members—one more than we had at the beginning of our last annual meeting, and 33 honorary members, making a total of 455. . . .

"It is gratifying to observe that this Association stands fourth, in point of numbers, among the State Associations on our exchange list, which includes Alabama, Iowa, Illinois, Kansas, Maine, Michigan, New York, Ohio, Pennsylvania, Tennessee, Texas, Utah, Washington, and West Virginia. New York leads with a membership of 790; Pennsylvania comes next with a membership of 722, though this Association has only been organized two years; Michigan comes third with a membership of 646; and this Association comes fourth with a present membership of 422. There are 211 Bar Associations of all sorts, State, City and County, in the United States. Pennsylvania alone has 40; Ohio has 28; Massachusetts has 10; New York and Minnesota have 9 apiece; Connecticut, Indiana, Maine, Washington, and Wisconsin have 7 apiece; and other States have from one to six such organizations. But three States in the Union have none, Arkansas, Florida, and Idaho; while Oklahoma and the District of Columbia each has one.

"Within the past year the membership of the Michigan State Bar Association has increased from 345 in 66 cities and towns, to 646 members in 94 cities and towns; an increase of 301 members and of 27 cities and towns represented.

"There are 100 counties in Virginia and 15 cities. By the census of 1890 we had a population of 1,655,880; and by the State Directory for the year 1897 there

appear to be 1801 white lawyers in the Commonwealth, which number has been increased by 30 new members admitted to the profession since the publication of the Directory. It will thus be seen that we have a large and fruitful field from which to secure desirable additions to this Association. Our membership should be largely increased, and I recommend the adoption of some special means for this purpose.

"In order to show the effect of organized effort and to illustrate what may be done by bar associations, it may be interesting to glance at the Association of the bar of the city of New York. This Association was organized in 1870, and its twenty-seventh annual report for the year 1897 shows that it now has 1,474 members. Within the past year it has completed a handsome structure, known as No. 42 West 44th street, at a total cost of \$640,000, of which \$300,000 is represented by bonds secured upon the property. The building is elegantly and luxuriously furnished, containing a large gymnasium and bath-rooms, in addition to spacious banquet halls, many private rooms for study, and a splendid library of 51,416 volumes. I had the pleasure of visiting this magnificent structure last winter, and no member of the bar who goes to New York should fail to see it. Of course we cannot hope to rival this superb institution, but it is interesting to observe that the population of New York city by the census of 1890 was 1,515,301, or 140,579 less than that of this State, and it is not out of the bounds of reason to expect that this Association can do more than it has done in the past.

"Nineteen new members were elected at the Hot Springs, making the present total membership, active and honorary, 474."

GARNISHMENT—DEBT CREATED AFTER SERVICE OF SUMMONS.—*In a garnishment proceeding, under sec. 3609 of the Virginia Code, must the garnishee disclose, and is the execution creditor entitled to, debts accruing to the execution debtor after service of the summons on suggestion?*—This is a question of great practical importance, and one which seems not to have been judicially settled by the Court of Appeals. It is believed that a careful study of the several sections bearing upon the subject must inevitably lead to an affirmative answer.

It is to be borne in mind that neither sec. 3609, nor the garnishment proceeding thereunder, creates the lien or gives the creditor additional rights. This section deals only with the *remedy* for enforcing rights which are elsewhere created. Let us see what those rights are, and whence they arise.

1. *The Creditor's Rights.*—Sec. 3601 provides that

"Every writ of *fiery facias* shall . . . be a lien, from the time it is delivered to a sheriff or other officer to be executed, on all the personal estate of or to which the judgment debtor is, *or may afterwards and before the return day of the said writ become*, possessed or entitled, and which is not capable of being levied on . . . except that, as against an assignee of any such estate for valuable consideration, or a person making a payment to the judgment debtor, the lien by virtue of this section shall not affect him, unless he had notice thereof at the time of the assignment or payment."

The clause in italics, "*or may afterwards and before the return day of the said writ,*" was inserted for the first time by the revisors of the Code of 1887. See Code of 1873, ch. 184, sec. 3. It is clear enough from this that the writ of *fiery facias* is a lien as well on debts created after the writ is issued and before the return day as on existing debts. It is expressly so provided. The only qualification is that

assignees and persons making payment to the judgment debtor, without notice of the execution, are not affected by the lien. Hence, even if there were no garnishment proceeding provided for, and the section quoted were the only statutory provision on the subject, the execution creditor would be entitled to a lien on the subsequently created debt. He might secure that lien as against assignees for value, and persons making payment, by giving express notice of his lien. The notice does not create, nor is it essential to the lien. The lien exists independently of the notice, and the latter becomes important only where the rights of *bona fide* assignees and persons making payment to the judgment debtor are concerned.

There can be no doubt, then, that (aside from the exemption law) the execution creditor has the right to subject, in a proper proceeding, and to the extent of his judgment, all debts due to his debtor, whether existing at the time the writ was issued or arising afterwards. See note by Professor Graves, in 2 Va. Law Reg. 707 (cl. 7). But this does not answer the question propounded. Assuming that the lien exists on such after-created debts, can they be subjected by garnishment?

2. *The Creditor's Remedies.*—Having ascertained his rights, let us consider the creditor's remedies. In the absence of special statutory provision, the creditor would probably be driven to the tedious and expensive procedure of a suit in equity, in order to subject the choses in action upon which his execution is a lien. But there are two statutory provisions of which he may avail himself. As these provisions were obviously intended to give the creditor a summary remedy, in lieu of the less convenient proceeding in equity, and a remedy co-extensive with his rights, we shall naturally expect to find that they do afford full and convenient relief; and, in case of doubt, we should construe the statutes liberally to that end.

(a) *Summons to answer interrogatories.*—Under sec. 3603, the execution debtor may be summoned before a commissioner to answer interrogatories filed by the creditor, and be compelled to make full disclosure of all "the estate on which a writ of *fiери facias* is a lien, including debts owing to him." Upon such disclosure, the debtor may be compelled, under sec 3604, to transfer such estate to the sheriff or other officer, who is required, under sec. 3608, to collect the debts and other choses in action so transferred. It is to be observed that the debtor is required to disclose *all* the estate on which the *fiери facias* is a lien, including, of course, after-created debts, and to transfer not only the debts existing at the date of the writ, but "any money, bank notes, securities, evidences of debt, or other personal estate, which it may appear by such answers are in the possession or under the control of the debtor." (Sec. 3603.) Hence, if the debtor adopt this course of procedure, his remedy will go to the full extent of his rights, and he will subject not only debts existing at the date of his writ, but those created in the interval between that date and the date of the proceeding to subject them.

(b) *Summons on suggestion.*—But suppose the creditor elects to proceed by garnishment, under sec. 3609 and the sections following. Here, again, we shall expect to find the remedy co-extensive with the right. The right is to subject after-created along with previously existing debts. May both be reached in the same proceeding, or is a second garnishment necessary in order to reach the former? Since the lien exists on the subsequently accruing debts, certainly no harm is done either to the execution debtor or the garnishee, by enforcing the lien as to both

prior and subsequent debts in the same proceeding. The service of the garnishment gives the garnishee notice of the lien (where notice affects the question); it stops payment of the after-created debt; it prevents the debtor from collecting it. Then, if the creditor is entitled to it, and the garnishee is bound to pay it to him in the end, why should not judgment be taken for it in that proceeding, rather than that the creditor be required to institute a second proceeding? A judgment then and there can do no possible injury to debtor or garnishee; a second proceeding can be of no benefit to either, and can only result in delay and in additional costs upon the debtor.

But, as strong as is the argument *ab inconvenienti*, we are not left to it to support the conclusion reached. Section 3610 provides that when the garnishee appears, he shall disclose whether "there is such liability on him," and the court may order him to pay "*any debts, or deliver any estate, for which there is such liability.*" What "liability" is referred to? Of course, that created by sec. 3601, which declares the *feri facias* a lien on any debt existing at the date of the writ or subsequently created. No liability attaches to the garnishee under any other section. "Such liability" extends to any debt in his hands upon which the creditor has a lien, and, therefore, any debt due the debtor at the return day of the writ, whether existing at the date of the writ or not. It is to be observed also that the garnishee is required to disclose whether there "is" such liability—that is, at the time of his answer—and not whether there "was" such liability at the date of the writ.

The conclusion seems to be irresistible, therefore, that the execution creditor is entitled to a judgment for whatever sums are due from the garnishee to the execution debtor, not to exceed the amount for which the writ issued, whether such sums accrued before or after the execution was issued.

Inasmuch as the *feri facias* is only a lien on such debts as are created before the return day of the writ (sec. 3601), and since the latter must (under sec. 3220) be returnable within ninety days, while the summons on suggestion is returnable to a term of court, "though more than ninety days after its date" (sec. 3609) it would seem to be equally clear that debts created after the return day of the writ, but before the return day of the summons on suggestion, would not be subject to the lien of the *feri facias*, nor to a judgment in behalf of the creditor.

CIVIL SERVICE.—INJUNCTION TO PREVENT REMOVAL FROM OFFICE.—In the case of *Priddie v. Thompson*, Judge Jackson, of the United States District Court of West Virginia, maintains in an opinion delivered July 28, 1897, that one who holds office in a classified service under the Civil Service Acts cannot be removed without cause, and is entitled to an injunction to protect him against removal when threatened. As far as we know, the case is one of first impression under the Civil Service law. The plaintiff was a deputy United States marshal, appointed under the Act of May 28, 1896, and of the character known as "office deputy" as distinguished from "field deputy." The former class was included in the classified service under the rules promulgated by the Civil Service Commission, and are appointed, as the court held, by the Attorney General, upon recommendation of the Marshal, with fixed salaries payable monthly out of the treasury of the United States.

The plaintiff was duly appointed as office deputy in June, 1896. Upon a change in the administration a new marshal was appointed, of different politi-

cal proclivities, who sought to remove the plaintiff in order to make room for one of the true faith. The application for the injunction followed. The subjoined extract from the opinion presents the grounds upon which the court considered the injunction proper:

"The next question is, can a person in the classified service be removed without cause, for political or religious reasons alone? It is manifest that the Act was passed to promote the efficiency of the civil service of the government, and was intended to prevent the removal of all officers for political reasons who were within the classified service. If such was not the object of the Act, its purpose is not apparent. The Act requires rules to be 'formulated and promulgated' for the guidance of the Commission, which the President, in connection with the members of the Commission, prepare and announce, and when so prepared and announced, become a part of the law itself. Rule 2, section 3, forbids the dismissal from the executive civil service of any one for political or religious opinions or affiliations. (13 Civil Service Reports, page 53.)

"It is obvious that Congress has undertaken, by the Civil Service Act, to restrain the exercise of the power to remove by the appointing power. It evidently hoped to improve the service by limiting the power of removal, leaving an incumbent to retain the position held until removed for cause other than political or religious belief. If this was not the intention of Congress then this Civil Service Act is mere '*brutum fulmen*,' and the attempt of Congress to improve the civil service futile and abortive.

"I conclude that when Congress passed the act known as the Civil Service Act it had in view the improvement and efficiency of the public service, and that this was its sole purpose.

"The other question remains to be considered, and that is, whether there is a remedy by injunction to restrain the Marshal from removing the plaintiff from the position he holds as chief deputy marshal? It cannot be questioned that the plaintiff has an interest of some kind in the office. If it is a vested interest he must and should be protected from ouster in some way. It has been wisely said that there is hardly to be found in jurisprudence a wrong without a remedy.

"The plaintiff, under the civil service rules, claims the right to hold and enjoy the office, and that he is not liable to removal except for cause which does not arise out of his political or religious opinions or affiliations; that as long as the statute law creating the office remains as it is on the statute book, he is entitled to hold the office during good behavior. If his contention is true, that he is protected by the Civil Service Act in the enjoyment of the office it necessarily follows that there should be some remedy by which he could protect his rights in the enjoyment of it. I know of no remedy at law that would furnish the protection he desires, or would adequately compensate him in the case of an eviction; but it is said that there never was a wrong that the law did not furnish a remedy, though sometimes an inadequate one.

"Clearly, neither *mandamus*, prohibition nor *quo warranto* could be resorted to in this case, and I doubt if *certiorari* would be effective. *Mandamus* is never resorted to as a remedy to prevent an ouster from office. Prohibition is a prerogative writ issued from a superior tribunal to an inferior one to prevent usurpation of power by the latter. Nor could *quo warranto* be resorted to except against the incumbent who is in possession of the office in question and who is required by

the writ to appear and show by what warrant of authority he exercises the functions of the office. The plaintiff here is in possession and wants to be let alone to enjoy what he claims is rightfully his until lawfully removed. As we have seen that *mandamus*, prohibition and *quo warranto* do not lie in the case under consideration, the only remedy left for consideration is the one furnished by injunction. The office in question has, in past times, been regarded as an office which belongs to the victorious political party and was always held to be a portion of party spoils. I do not now so understand it nor do I so regard it. If there is anything in the Act of Congress known as the Civil Service Act, and the amendments to it, the office is one fully protected by it and the occupant is withdrawn from the spoils of party. In my judgment the Civil Service Act is a law founded in wisdom, and if it is executed in the same wisdom in which it was conceived and enacted it will not only prove to be one of the wisest statutes that has been enacted in the later part of this century, but one of the safeguards of our republican institutions. I reach the conclusion that the incumbent in the position is protected in the enjoyment of it by the Civil Service Act and the amendments thereto. But it is insisted by the defense that there is no remedy to prevent his removal from the office. Since the Act known as the Civil Service Act became the law of the land, it, like all other statutes, must be referred to the courts for construction when any question arises under it. If, therefore, it was the object and purpose of the Act to create a new office or position under its protection, there should be, if there is not, some remedy when it is sought to remove an incumbent under it. The fifteenth section of the Act approved January 16, 1883, provides for the punishment of any person who shall be guilty of a violation of any of its provisions; but it does not provide a statutory remedy against the removal of an incumbent from office. Congress may have wisely left this matter to the rights of parties as they existed before the passage of this Act.

"In the case under consideration the question to be determined is not the title to the position or office held by the incumbent. The title is not in dispute, as the incumbent legally holds the office or position, as the case may be. It is therefore only a question of removal. Being a question of removal, if there is any remedy to stay the hand that causes the removal, it must be by injunction. It is a preventive proceeding and always furnishes a remedy to prevent a wrong being inflicted when there is no other adequate remedy. What is the wrong now complained of? Stripped of all the surplusage that generally surrounds questions of this character, the incumbent holds his position by regular appointment and is unquestionably, if not the *de jure*, the *de facto* incumbent of it. The right to hold the position may be inquired into by writ of *quo warranto*. I am not called upon to determine any question that might arise under that writ. I am asked to determine whether or not the incumbent, an office deputy marshal, who has been classified under the Civil Service Act, shall be entitled to the protection of the Act which expressly declares, 'that no person in the executive civil service shall dismiss or cause to be dismissed any person for political or religious affiliation.'

"As I have heretofore said, no remedy exists unless the restraining power of the court is interposed. I reach the conclusion that when the title to the office is not in dispute, but when the question of removal is involved, as in this case, for political reasons, there is a remedy by injunction. In this case it is an effort to oust the party from his position, not only without the sanction of law, but, as I

hold, in violation of law. In the case of *Ex parte Sawyer*, 124 U. S. 402, Chief Justice Waite, referring to the remedy by injunction, uses the following language which seems to support me in the view I have taken of the question under consideration. He says: 'I can easily conceive of circumstances under which a removal even for a short period, would be productive of irremediable mischief. Such cases may rarely occur and the propriety of such an application may not often be seen, but if one arises, and if the exercise of the jurisdiction can ever be proper, the proceedings of the court in due course upon the bill filed for such relief, will not be void even though the grounds upon which it is asked may be insufficient.' The law as laid down by the learned Chief Justice in the case cited, seems to cover the case of this plaintiff whom it is proposed to remove. 'High on Injunctions' says: 'While courts of equity refuse to interfere by the exercise of their preventive jurisdiction to determine questions relating to titles of office, they frequently recognize and protect the position of officers *de facto* by protecting such position against the interference of adverse claimants.'

"It follows, from what I have announced as the opinion of the court, that an injunction will be allowed to restrain the Marshal, and all others claiming the position now held by the plaintiff, from any interference or molestation with him in the possession of the office or position now held by him until the further order of the court."

SUGGESTED LEGISLATION.—We publish below the report of the Committee of the Virginia State Bar Association on Legislation and Law Reform, prepared by its chairman, W. W. Old, Esq., of Norfolk, and read at the recent meeting of the Association. The suggestions are valuable, and we hope they may attract the attention of the legislature soon to assemble at Richmond. If members of the legislature could be brought to feel that the Bar Association, in making suggestions, does not assume to dictate legislation, and does not usurp unwarranted functions, but is merely exercising the duty of every good citizen, or body of good citizens, in pointing out defects in our laws and offering assistance in remedying these defects, the result would be extremely gratifying. We should like to see closer relations established between the two bodies. If the representatives of the Association will realize that legislative committees are jealous of their own prerogatives, and, bearing this in mind, will exercise a proper diplomacy, there is no reason why we may not hope for the most cordial relations between the legislature and the Association. Farmers and other laymen in the legislature may be as capable of dealing with political questions as lawyers, but surely the views of so representative and so intelligent a body of lawyers as the Bar Association, on subjects purely legal, are worthy of serious consideration. Such consideration, we believe, will be accorded when the one body can be brought to recognize the other as a friendly helper, and not as an intermeddler. Precisely how this is to be done is the difficulty. It is easier to conclude that Cerberus is to be propitiated, than to devise the means of doing it. Let the Association committees work out the problem. We believe it entirely practicable.

"As there has been no session of our General Assembly since the last meeting of this Association, your committee has no report to make of the action of that

body, or of the action of your committee in regard to any proposed legislation before that body, as required by Article V. of your By-Laws.

"Under the classification of its duties, excluding such matters as have been referred to a special committee, your committee respectfully makes the following suggestions with the hope that they may, if approved by the Association, bear some fruit by the enactment of such laws, by our next General Assembly, as will carry them into effect:

"1. Our Supreme Court of Appeals has had before it, several times, the question as to whether a prisoner must be present when a motion is made for a continuance of his case, and whether such presence shall be shown by the record affirmatively. A case of that kind has been recently reported in the VIRGINIA LAW REGISTER. If we had a statute providing that whenever it appears from the record in a felony case that the prisoner was actually present at any stage of the trial, it shall be presumed he was present throughout the trial, unless the record shows to the contrary, and that no judgment of an inferior court in a felony case shall be reviewed by an appellate court for any other error not appearing upon the face of the record, it would save our appellate courts from a great many annoying questions and the State from much expense.

"2. Your committee, without questioning or considering the policy of the recent statute giving justices of the peace exclusive jurisdiction in all cases of misdemeanor, is of the opinion that the law should be so amended as to require our grand juries to inquire into and make presentment of all misdemeanors as formerly, as otherwise a large class of misdemeanors are liable to go unpunished—such as gambling, selling liquor without license or to minors, etc. As the law now stands the prosecution for such misdemeanors rests too much upon some individual in the community in which they are committed, and that grand inquest which the grand jury of every city and county was required diligently to make as to all such cases, has been abolished. Such presentments could be made by a grand jury, and when made, could, by law, be referred to the proper justice for trial, to be proceeded with as now provided by law. Every community, for its protection against the violation of our penal statutes, requires some legally constituted authority to inquire into misdemeanors as well as felonies, and no better plan has ever been suggested than that of a grand jury.

"3. Owing to the present state of our law, as settled by many decisions of our appellate court, in regard to the effect of a failure to make a motion for a new trial, your committee is of opinion that a law should be enacted to the effect that the failure to make a motion for a new trial, in any cause, shall not in any way be deemed a waiver of any objection made during the trial, if the same be properly made a part of the record.

"Your committee has had its attention called to the fact that it has become very common in the cities for real estate agents and their employees, and in the counties for the clerks of courts, their deputies, and other persons, to draw deeds and wills for compensation, and at rates much lower than those regarded as proper by our profession. This, such parties are well able to do because they pay no license to practice law, and are subject to none of the penalties imposed upon or responsibilities assumed by the members of the legal profession. Such a practice creates, in every community in which it exists, an uniform competition with our profession, and a temptation too formidable to be resisted by those who require

such services. Your committee is of opinion that the best, and perhaps the only practicable, way to prevent this evil and injustice is to have the subject brought to the attention of our General Assembly and a law passed defining with more particularity what shall constitute the practice of law in this State, so that such persons may be made amenable for a violation of our license laws, and the public may be protected against the acts of incompetent men.

"4. Our Association has now been in existence for nine years, but up to this time has made but little impression upon the legislation of our State. There may be a reason found for this, perhaps, in the organization of this committee, composed as it is of eighteen members, one from each judicial circuit, residing far apart from each other, and often unacquainted with each other, and all generally busy in meeting their daily professional engagements. Under such circumstances it is impracticable, if not impossible, for your committee to have such meetings during the sessions of our General Assembly, and take such supervision of the legislation proposed by that body as is contemplated by your by-laws. May it not be well, then, for us to learn a lesson from the Bar Association of the city of New York, and adopt some action similar to that which it has adopted? We quote from the report of the Committee on the Amendment of the Law bounding the proceedings of that Association for 1896, as follows:

" 'That during the session of the legislature it held weekly meetings and examined all the bills introduced into the two houses. Those believed to come within the province of this particular committee—and the number was large—were carefully scrutinized, discussed and considered, with reference to the existing body of the law and such needed reform as to your committee seemed desirable. The committee was in regular correspondence with the chairman of the various committees of the Senate and Assembly having charge of the bills which had been under examination. As to some, decided opposition was expressed; others were simply opposed, and as to others, amendments were proposed.

" 'This committee has to acknowledge the continued politeness of the members of the legislature in the cordial reception of suggestions from time to time forwarded to them.

" 'The committee believes that its services have been useful. As a rule, the views of this committee were welcomed at Albany, and with very few exceptions met with the approval of the legislature. Scarcely a bill distinctly opposed by the committee became a law.'

"Your committee does not believe that the members of the General Assembly of our State would be less polite in their cordial reception of suggestions from a committee of this Association than were the members of the New York legislature in the case of the committee of the Bar Association of the city of New York; nor that such a committee, acting for and representing this Association, would fail to meet with success in endeavoring to co-operate with our General Assembly and the chairmen of its various committees having in charge bills before that body.

"But the committee of the Bar Association of the city of New York was composed of eight members, so located that it could hold weekly meetings and with a secretary to do the correspondence. With such a committee, composed of three or five members, so located that it could hold frequent meetings and with a secretary to do the correspondence, if necessary, your committee believes that the members of your General Assembly would rather welcome than repel its suggestions, and much of our legislation might be improved, if in no other way than by removing the obscurity so often found in our newly-enacted laws.

"In this way our State, as well as litigants in our courts, might be saved much expense, and very soon such a committee would be regarded as rather necessary than otherwise, and our Association would be brought in more direct touch with those who are charged with making our laws."